

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	C. A. No. _____
v.)	
)	
CAMILLE J. AMATO,)	
THOMAS AMATO,)	
PENN YAN BOAT COMPANY LLC,)	
PENN YAN MARINE)	
MANUFACTURING CORP.,)	
CAMILLE PROPERTIES, INC.,)	
and YATES COUNTY,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiff, the United States of America ("United States"), by authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges:

NATURE OF THE ACTION

1. This is a civil action under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607(a), for the recovery of response costs incurred by the United States in response to the release or threatened release of hazardous substances at the Penn Yan Superfund Site located at 15 Waddell Avenue, in Penn Yan, Yates County, New York ("Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties hereto pursuant to CERCLA Sections 107(a) and 113(b), 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) because the releases or threatened releases of hazardous substances giving rise to the claim occurred in this District and the Site is located in this District.

DEFENDANTS

4. Defendant Camille J. Amato is a real person who resides at 32318 Nocks Landing Road, Atlantic, VA 23303. During some or all of the time period between March 19, 1987 and August 1, 2001, Defendant Camille J. Amato served as President and Treasurer of Defendant Camille Properties, Inc. ("Camille Properties") and as President, Secretary and Treasurer of Defendant Penn Yan Marine Manufacturing Corporation ("Penn Yan Marine").

5. Defendant Thomas Amato is a real person who resides at 32318 Nocks Landing Road, Atlantic, VA 23303. During some or all of the time period between March 19, 1987 and August 1, 2001, Defendant Thomas Amato served as Vice President and Secretary of Camille Properties and as Vice President of Penn Yan Marine.

6. Defendant Penn Yan Boat Company LLC ("Penn Yan Boat") is a Delaware corporation incorporated in 2000 and dissolved in 2007.

7. Defendant Penn Yan Marine is a now insolvent business association incorporated

by Thomas and Camille Amato in the State of New York on December 4, 1986.

8. Defendant Camille Properties is a now insolvent business association incorporated by Thomas and Camille Amato in the State of New York on December 9, 1986.

9. Defendant Yates County is a municipality located in New York State.

GENERAL ALLEGATIONS

Site Description and Background

10. The 14.5-acre Site was the location of a fiberglass boat manufacturing operation that began in 1930.

11. In 1986, Thomas and Camille J. Amato acquired the boat manufacturing operation at the Site and renamed it Penn Yan Marine.

12. On or about April 6, 1987, the Site was acquired by Camille Properties. From that date through May 28, 1998 Camille Properties leased the Site to Penn Yan Marine.

13. On or about May 28, 1998, Site ownership was transferred to Yates County following tax foreclosure proceedings. Yates County continues to own the Site today.

14. From approximately May 28, 1998 through October 21, 1999, Penn Yan Marine continued to conduct boat manufacturing operations at the Site.

15. From October 21, 1999 through August 1, 2001, Penn Yan Marine conducted its boat manufacturing operations at the Site under an agreement with Yates County pursuant to the terms of a settlement stipulation dated October 21, 1999.

16. Defendants Thomas Amato, Camille J. Amato, Penn Yan Marine, and Penn Yan

Boat each operated boat manufacturing activities at the Site at times relevant to this Complaint.

EPA Response Actions

17. On or about November 1, 2002, the New York Department of Environmental Conservation requested that EPA take a response action to identify, stabilize and dispose of hazardous substances present at the Site.

18. Between approximately December 1, 2003 and March 23, 2004, EPA undertook various response actions at the Site, including investigation of possible sources of contamination, removal of drums and other containers and off-site disposal of their contents, and removal of asbestos piping and debris.

19. EPA detected the presence of various “hazardous substances” within the meaning of CERCLA Section 101(14), 42 U.S.C. §9601(14), at the Site, including polychlorinated biphenyls (“PCBs”), asbestos, acetone, toluene, trichloroethene (“TCE”), styrene, and mercury.

CERCLA Liability

20. CERCLA defines “facility” to include, inter alia, “any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.” 42 U.S.C. § 9601(1). The Penn Yan Site is a “facility” within the meaning of 42 U.S.C. § 9601(9).

21. CERCLA defines “person” to include, inter alia, “individual” and “municipality.” 42 U.S.C. § 9601(21). Each Defendant is a “person” within the meaning of 42 U.S.C. § 9601(21).

22. CERCLA establishes liability for various types of “covered persons”, including

“the owner and operator of a vessel or a facility ... from which there is a release or threatened release,” 42 U.S.C. § 9607(a)(1), and “any person who at the time of disposal of any hazardous substance owned or operated any facility [from which there has been a release or threat of release] at which such hazardous substances were disposed of.” 42 U.S.C. § 9607(a)(2).

23. There have been releases or threatened releases of hazardous substances into the environment at the Site within the meaning of Sections 101(14) & (22) and 107(a) of CERCLA, 42 U.S.C. § 9601(14) & (22) and 9607(a).

24. Defendant Yates County is a “covered person” pursuant to 42 U.S.C. § 9607(a)(1) and 9607(a)(2).

25. During the time period that Defendants were owners or operators at the Site, hazardous substances, including but not limited to, polychlorinated biphenyls (“PCBs”), asbestos, acetone, toluene, trichloroethene (“TCE”), styrene, and mercury were “disposed” of within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

26. Defendants Thomas Amato, Camille J. Amato, Camille Properties, Penn Yan Marine and Penn Yan Boat are each a “covered person” pursuant to 42 U.S.C. § 9607(a)(2).

27. Section 107(a) of CERCLA provides that “covered persons” are liable for “all costs of removal ... incurred by the United States Government ... not inconsistent with the national contingency plan.” 42 U.S.C. § 9607(a)(A)

28. As a result of the release or threatened release of hazardous substances at the Site, the United States has taken “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and has thereby incurred costs.

29. Pursuant to Section 107(a) of CERCLA, each Defendant is jointly and severally liable to the United States for all costs of response. 42 U.S.C. § 107(a).

CLAIM FOR RELIEF FOR RECOVERY OF RESPONSE COSTS

30. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

31. The United States has incurred response costs, as defined in CERCLA Section 101(25), 42 U.S.C. § 9601(25), and authorized by CERCLA Section 104, 42 U.S.C. § 9604, as a result of the release or threatened release of hazardous substances at the Site.

32. The United States' response costs in connection with the Site were incurred in a manner not inconsistent with the National Contingency Plan, promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

33. As of December, 2007, the United States has incurred unreimbursed response costs of at least \$780,000 in connection with the Site. The United States has incurred additional response costs after December 31, 2007.

34. To date, Defendants have failed to reimburse the United States for any of the response costs incurred in connection with the Site.

35. Defendants are jointly and severally liable for response costs incurred by the United States at the Site, pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that this Court enter a judgment against each Defendant as follows:

1. Order each Defendant to pay all response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Site, plus prejudgment interest on those costs; and
2. Grant such other and further relief as the Court deems just and proper.

Dated this 15th day of August, 2008.

Respectfully submitted,

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resource Division

BRUCE GELBER
Chief
Environmental Enforcement Section
Environment and Natural Resources Division

MARCELLO MOLLO
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2757

TERRANCE P. FLYNN
United States Attorney
Western District of New York

By:

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Christopher V. Taffe
Assistant United States Attorney
Western District of New York
U.S. Courthouse
100 State Street
Rochester, NY 14614
(585) 263-6760

OF COUNSEL:

Henry Guzmán
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region II
290 Broadway, 17th Floor
New York, NY 10007-1866
(212) 637-3166